

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ISMAEL MARRERO-ROLON, *et al.*,

Plaintiffs,

v.

CIVIL NO. 15-1167 (JAG)

PUERTO RICO ELECTRIC POWER
AUTHORITY, *et al.*,

Defendants.

INFORMATIVE MOTION IN COMPLIANCE WITH COURT'S ORDER, DKT. 646,
ON DENIAL OF PLAINTIFFS' REQUEST FOR LIFT OF AUTOMATIC STAY

TO THE HONORABLE COURT:

COME NOW Defendants Puerto Rico Electric Power Authority ("PREPA"), William Rodney Clark, César Torres Marrero, Edwin Rodríguez, Petrobras America, Inc., Petróleo Brasileiro S.A., Vitol, Inc., Vitol S.A., Inc., Carlos R. Méndez D/B/A Carlos R. Méndez & Associates, Petro West, Inc., Trafigura, A.G., Trafigura Beheer, B.V., Trafigura Limited, Trafigura Argentina S.A., Shell Trading (US) Company, Inspectorate America Corporation, Saybolt LP, and Altol Chemical Environmental Laboratory, Inc., and Altol Environmental Services, Inc. (collectively, the "Defendants"), and respectfully request:

1. On October 1, 2018, this Honorable Court entered an *Order* requiring "the parties [to] submit ... a proposed notice to be sent to the class, schedule any discovery needed to identify all class members, and decide the manner in which notice shall be provided." See, Dkt. No. 623 (the "Order"). The Court further ordered the parties to "file a joint motion certifying compliance with the Order and submitting the proposed notice by November 1, 2018." Id.

2. In response to the Order, on October 15, 2018, PREPA filed a *Notice of the Puerto Rico Electric Power Authority Regarding Violation of Automatic Stay* (the "Notice") respectfully stating that the Order, which would require PREPA to expend significant resources to identify and notify class members, violates the automatic stay pursuant to Title III of the Puerto Rico Oversight,

Management, and Economic Stability Act (“PROMESA”), 48 U.S.C. §§ 2101-2241. See, Dkt. No. 626.

3. Also in response to the Order, on October 19, 2018, all other Defendants filed a *Motion to Modify Partial Stay Order and Judgment Staying Case or, in the Alternative, for Stay of Proceedings Pending Petition for Leave to Appeal*, explaining, among other things, that, as a result of the automatic stay, without PREPA’s participation they are simply unable to comply with the class notice requirement because they are not in custody, possession and control of any information relating to the class members. See, Dkt. No. 627. Defendants also moved the Court to stay the proceedings while their *Petition for Interlocutory Appeal* is pending before the Court of Appeals for the First Circuit. Id.

4. On October 29, 2018, Plaintiffs filed a “*Statement*” in response to PREPA’s *Notice*, at Dkt. 628, stating that they “plan[ned] to move in the Title III Proceedings... for relief from the automatic stay”. See, Dkt. 628, at ¶ 1.¹

5. On November 1, 2018, all Defendants filed a *Motion for Relief from Order on Notice to Class*, requesting the Court to relieve the Defendants from complying with the Order at Dkt. No. 623 until the Title III Court ruled on the motion for relief from the automatic stay that Plaintiffs anticipated they would be filing. See, Dkt. No. 629. Plaintiffs responded at Dkt. No. 632.

6. On November 27, 2018, this Honorable Court entered an Order holding in abeyance Defendants’ motions at Dkt. Nos. 627 and 629, “pending the Title III Court’s decision as to Plaintiffs’ request for relief from the stay.” See, Dkt. No. 646. The Court further ordered the parties to promptly inform this Court once Plaintiff’s request had been adjudicated in Case No. 17-bk-03283 (LTS). Id.

¹ Plaintiffs also filed an *Opposition* to all other Defendants’ *Motion to Modify Partial Stay Order and Judgment Staying Case or, in the Alternative, for Stay of Proceedings Pending Petition for Leave to Appeal*. See Dkt. No. 631.

7. On February 8, 2019 Plaintiffs moved the Title III Court for relief from the automatic stay. See Dkt. No. 1074, Case No. 17-bk-04780 (LTS), *Motion for Relief from Automatic Stay*. PREPA opposed Plaintiffs' request on March 8, 2019. See Dkt. No. 1124.²

8. The Title III Court heard oral argument on Plaintiffs' *Motion for Relied from Automatic Stay* at the Omnibus Hearing held on April 24, 2019.

9. In compliance with the Order at Dkt. No. 646, Defendants hereby inform the Court that on May 9, 2019, the Title III Court **denied** Plaintiffs' *Motion for Relief from Automatic Stay* and stated that "[t]he automatic stay continues in place as against all defendants in the Litigation". See Exhibit A, Dkt. No. 1228, Case No. 17-bk-04780 (LTS).³

WHEREFORE, Defendants respectfully request that the Court take notice of the above, that it modify the *Partial Stay Order* and the *Judgment Staying Case* so as to stay all proceedings in this matter including the tasks required by Dkt. Nos. 623, 624, and 625 until (i) the termination or lifting of PREPA's automatic stay under PROMESA; and (ii) the First Circuit rules upon Defendants' *Petition for Interlocutory Appeal* of the *Class Certification Order* under Fed.R.Civ.P. 23(f) (including any subsequent appeal), or alternatively under Fed.R.App.P 8(a).

WE HEREBY CERTIFY that on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to all attorneys and parties of record.

RESPECTFULLY SUBMITTED

² Plaintiffs later filed a *Reply Brief in Support of Their Motion for Relief from Automatic Stay* (Dkt. No. 1141).

³ Jointly Administered with Case No. 17-bk-3283 (LTS).

In San Juan, Puerto Rico, on this 13th day of May 2019.

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